

RECEIVED
SECRETARY OF STATE
ELECTIONS WALK-IN

STATE OF OHIO
SECRETARY OF STATE

2012 AUG 24 PM 5: 17

IN RE NOMINATION PETITION OF)
GARY JOHNSON AND JAMES GRAY)
AS CANDIDATES OF THE LIBERTARIAN)
PARTY FOR THE OFFICES OF PRESIDENT)
AND VICE PRESIDENT OF THE UNITED)
STATES)
KELLY MILLS and)
CYNTHIA REES,)
Protestors)
_____)

**PROTEST AGAINST NOMINATION PETITION OF GARY JOHNSON AND JAMES
GRAY AS CANDIDATES OF THE LIBERTARIAN PARTY FOR THE OFFICES OF
PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES**

Protestors KELLY MILLS and CYNTHIA REES respectfully submit this written protest against the nomination petition of Gary Johnson and James Gray as the candidates of the Libertarian Party for the offices of President and Vice President of the United States, pursuant to Ohio Rev. Code § 3513.263. Protestors MILLS and REES are qualified electors of the State of Ohio who are eligible to vote for Messrs. Johnson and Gray. *See* Declaration of [KELLY MILLS], ¶¶ 3-5, *attached as* Exh. 1; Declaration of CYNTHIA REES, ¶¶ 3-5, *attached as* Exh. 2.

Gary Johnson is ineligible to appear on the ballot as the Libertarian Party's candidate for the office of President of the United States under Ohio's "sore loser" statute, Ohio Rev. Code § 3513.04. That law provides, in relevant part, "[1] No person who seeks party nomination for an office or position at a primary election [2] by declaration of candidacy . . . [3] shall be

permitted to become a candidate by nominating petition . . . at the following general election for any office.” Ohio Rev. Code § 3513.04. This statute squarely applies here.¹

First, Gary Johnson sought “party nomination for an office or position at a primary election.” *Id.* Johnson sought the 2012 Republican nomination for the office of President in numerous presidential preference primaries, including in the States of Florida,² New Hampshire,³ Michigan,⁴ Missouri,⁵ South Carolina,⁶ Georgia,⁷ Tennessee,⁸ and Mississippi.⁹ Gary Johnson

¹ In *Libertarian Party of Ohio v. Husted*, No. 2:11-CV-722, *Nunc Pro Tunc* Order at 1 (S.D. Ohio Oct. 18, 2011), attached as Exh. 4, the U.S. District Court for the Southern District of Ohio stated that the Libertarian Party may “appear[] on the ballot for the November 2011 and November 2012 elections.” It added, however, “The LPO and its candidates must still satisfy all other applicable filing requirements as required by state law for political party and **candidate eligibility**, with the exception of those contained in O.R.C. § 3517.01(A)(1) [concerning signature requirements].” *Id.* (emphasis added). Because Gary Johnson’s candidacy violates Ohio Rev. Code § 3513.04, he does not “satisfy all other applicable . . . requirements . . . [for] candidate eligibility.” Thus, the court’s order does not allow the Libertarian Party to have Gary Johnson appear on the 2012 general election ballot as its candidate for President.

² See Florida Division of Elections, *Presidential Preference Primary Information*, available at <http://election.dos.state.fl.us/voting/voting-info-ppp.shtml>.

³ See New Hampshire Sec’y of State Will W. Gardner, *2012 Presidential Primary – Republican President: Summary President Republican*, available at <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=13169>.

⁴ See Michigan Dep’t of State, *Candidate Listing: Presidential Primary, February 28, 2012*, available at http://www.michigan.gov/documents/sos/Candidate_Listing_368461_7.pdf.

⁵ See Missouri Sec’y of State Robin Carnahan, *Certified Candidate List: February 2012 Presidential Preference Primary*, available at <http://www.sos.mo.gov/candidatesOnWeb/DisplayCandidatesPlacementPPP2012.asp>.

⁶ See S.C. State Election Comm’n, *2012 Republican Presidential Primary Candidates*, available at http://www.sevotes.org/2011/11/18/2012_republican_presidential_primary_candidates.

⁷ See Georgia Sec’y of State Brian P. Kemp, *List of Candidates on the March 6, 2012 Republican Presidential Preference Primary Ballot*, available at <http://www.sos.ga.gov/elections/2012pppr.htm>.

neither won any of these elections, nor was selected as the Republican Party's candidate for President of the United States.

Second, Johnson participated in several of those primaries "by declaration of candidacy."

Id. Multiple states required him to file a declaration of candidacy to participate in their presidential primaries. *See, e.g.*, N.H. Rev. Stat. § 655:47(I) ("The names of any persons to be voted upon as candidates for president at the presidential primary shall be printed on the ballots upon the filing of declarations of candidacy with the secretary of state."); *see also* Mo. Rev. Stat. § 115.761(1) ("The official list of presidential candidates for each established political party shall include the names of all constitutionally qualified candidates for whom . . . before 5:00 p.m., on the eleventh Tuesday prior to the presidential primary, a written request to be included on the presidential primary ballot is filed with the secretary of state.").

Third, Gary Johnson is now seeking to "become a candidate" of the Ohio Libertarian Party for President of the United States in Ohio's November 2012 general election. Ohio Rev. Code § 3513.04. The "sore loser" law applies when a person seeks to become a candidate "by nominating petition." *Id.* The Libertarian Party, of course, filed a "Certificate of Nomination" to name Gary Johnson as its presidential candidate. *See* Exh. 3. State law provides, however, that the Libertarian Party also must file a petition to be able to nominate candidates such as Mr. Johnson for offices such as President. *See* Ohio Rev. Code § 3517.01(A)(1) (holding that a

⁸ *See* Tennessee Sec'y of State Tre Hargett, *State of Tennessee, March 6, 2012, Republican Primary*, available at <http://www.tn.gov/sos/election/results/2012-03/RepPresStateCertCountyTotals.pdf>.

⁹ *See* Mississippi Sec'y of State, *2012 General Election Candidate List*, available at http://www.sos.ms.gov/links/elections/home/tab1/2012%20Candidate%20Qualifying%20List_AF.pdf.

group qualifies as a “political party” eligible to place candidates on the ballot if it submits “a petition signed by qualified electors”).

In *Libertarian Party of Ohio v. Husted*, No. 2:11-CV-722, *Nunc Pro Tunc* Order at 1 (S.D. Ohio Oct. 18, 2011), *attached as* Exh. 4, the U.S. District Court for the Southern District of Ohio held that the Secretary of State could not exclude the Libertarian Party from nominating candidates for the office of President (or other offices) on the grounds that the Party failed to comply with § 3517.01(A)(1) petition requirement; the court earlier had held that § 3517.01(A)(1) would be unconstitutional under such circumstances. Thus, pursuant to the *Nunc Pro Tunc* Order, the Secretary of State is required to treat the Libertarian Party and its candidates, including Gary Johnson, as if they had properly filed such a Petition. *Id.* Because this Order requires the Secretary to treat § 3517.01(A)(1)’s petition requirements as constructively fulfilled, the Secretary should maintain consistency by concluding that the “petition” requirements of the “sore loser” law, § 3513.04, likewise have been constructively fulfilled.

Perhaps more importantly, the “sore loser” law is in its very nature and essence a remedial statute. The U.S. Supreme Court has recognized that such laws play an important function in the electoral process by helping states “avert[] divisive sore-loser candidacies.” *Burdick v. Takushi*, 504 U.S. 428, 439 (1992), and ensure that “[t]he general election is reserved for candidates with broad based support,” *Cooley v. Keisling*, 45 F. Supp. 2d 818, 822 (D. Or. 1999). Indeed, *specifically with regard to the Libertarian Party*, the U.S. Supreme Court has held that allowing a candidate “who senses defeat [to] launch a ‘sore loser’ candidacy by defecting to the LPO [Libertarian Party] primary” is likely to lead to “party splintering and excessive factionalism,” which states have an interest in preventing. *Clingman v. Beaver*, 544

U.S. 581, 596 (2005) (quotation marks omitted and emphasis added); *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 369 (1997) (discussing the state’s “weighty . . . interests in ballot integrity and political stability”).

Thus, as a remedial statute, the “sore loser” law ““should receive a broad and liberal construction to effect the purposes of its enactment.”” *Convenient Food Mart, Inc. v. Ohio Liquor Cont. Comm’n*, 2010 Ohio 4612, ¶ 14 (10th App. Dist.), *quoting Miami Cty. v. Dayton*, 92 Ohio St. 215, 219-20, 110 N.E. 726, 728 (1915). Indeed, the Court of Appeals has emphasized that “statutes . . . [that] are remedial in character . . . are to be liberally construed and given ***the broadest interpretation possible.***” *Hess v. City of Toledo*, 133 Ohio App. 3d 729, 735, 729 N.E.2d 823, 827 (6th App. Dist. 1999) (emphasis added). The Secretary therefore should decline to adopt a narrow, cramped reading of the “sore loser” statute, and strive to give the law full effect by reading it broadly to apply to Mr. Johnson’s nomination. Having unsuccessfully sought the Republican nomination for President of the United States by participating in the presidential preference primaries in numerous states, Ohio law now prohibits Gary Johnson from running in the general election for that office.

CONCLUSION

For these reasons, Protestors respectfully request that the Secretary of State uphold this Protest, decline to include Gary Johnson on the ballot as a candidate for President of the United States, and deem the Libertarian Party’s nominations for the offices of President and Vice President of the United States legally invalid.

[SIGNATURES ON NEXT PAGE]

Respectfully submitted,

Charles M. Miller

*Charles M. Miller / WTK
for the State*

Charles M. Miller (0073844)
KEATING MUETHING & KLE KAMPLL
One East Fourth Street, Ste. 1400
Cincinnati, Ohio 45202
Tel: (513) 579-6967
Fax: (513) 579-6457
cmiller@kmklaw.com

Kelly Mills

KELLY MILLS
1454 Runaway Bay Drive, #1D
Columbus, OH 43204
(740) 225-3873

Cynthia Rees

CYNTHIA REES
253 Murphy's Green Drive
Powell, OH 43065
(614) 389-4301

STATE OF OHIO
SECRETARY OF STATE

IN RE NOMINATION PETITION OF
GARY JOHNSON AND JAMES GRAY
AS CANDIDATES OF THE LIBERTARIAN
PARTY FOR THE OFFICES OF PRESIDENT
AND VICE-PRESIDENT OF THE UNITED
STATES.

Kelly Mills and
Cynthia Rees,

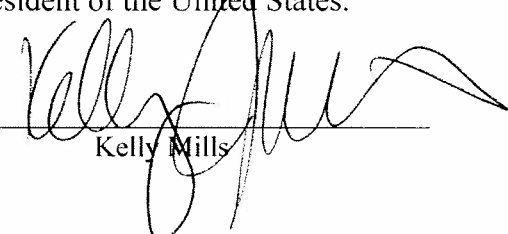
Protestors

AFFIDAVIT OF PROTESTOR KELLY MILLS

I, Kelly Mills hereby swear or affirm as follows:

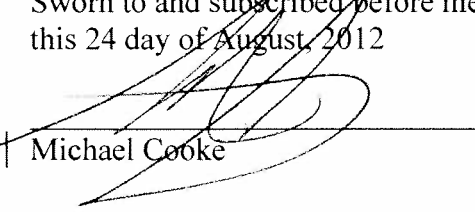
1. The statements in this affidavit are true and correct to the best of my knowledge, and are based on my personal knowledge except where otherwise specified. If called to testify, I would testify to the following facts.
2. I am at least 18 years of age and of sound mind.
3. I am a citizen of the United States and the State of Ohio. I reside in Columbus, Ohio, and have lived here for more than 2 years.
4. I am registered to vote in the State of Ohio, and am a qualified eligible elector.
5. I have the right to vote for candidates for the offices of President and Vice President of the United States. Specifically, I would have the right to vote for Gary Johnson and James Gray (and for the presidential electors affiliated with them), if they appeared on the general election ballot as candidates for the offices of President and Vice President of the United States.

Dated: August 24, 2012



Kelly Mills

Sworn to and subscribed before me,
this 24 day of August, 2012



Michael Cooke



MICHAEL P. COOKE
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 417.02 B.C.C.

STATE OF OHIO
SECRETARY OF STATE

IN RE NOMINATION PETITION OF
GARY JOHNSON AND JAMES GRAY
AS CANDIDATES OF THE LIBERTARIAN
PARTY FOR THE OFFICES OF PRESIDENT
AND VICE-PRESIDENT OF THE UNITED
STATES.

Kelly Mills and
Cynthia Rees,

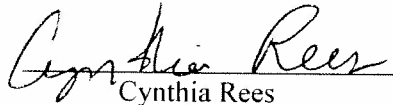
Protestors

AFFIDAVIT OF PROTESTOR CYNTHIA REES

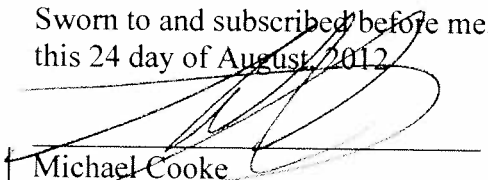
I, Cynthia Rees hereby swear or affirm as follows:

1. The statements in this affidavit are true and correct to the best of my knowledge, and are based on my personal knowledge except where otherwise specified. If called to testify, I would testify to the following facts.
2. I am at least 18 years of age and of sound mind.
3. I am a citizen of the United States and the State of Ohio. I reside in Powell, Ohio, and have lived here for approximately 3 years.
4. I am registered to vote in the State of Ohio, and am a qualified eligible elector.
5. I have the right to vote for candidates for the offices of President and Vice President of the United States. Specifically, I would have the right to vote for Gary Johnson and James Gray (and for the presidential electors affiliated with them), if they appeared on the general election ballot as candidates for the offices of President and Vice President of the United States.

Dated: August 24, 2012


Cynthia Rees

Sworn to and subscribed before me,
this 24 day of August, 2012


Michael Cooke



MICHAEL P. COOKE
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.



RECEIVED
SECRETARY OF STATE
ELECTIONS WALK-IN

2012 JUN 29 PM 4:38

Libertarian Party of Ohio

WWW.LPO.org

2586 Tiller Lane; Suite 2K
Columbus, OH 43231-2265

June 15, 2012

To: Ohio Secretary of State Jon Husted

The enclosed documents certify that the 2012 Libertarian Party candidate for President and Vice-President of the United States are Gary Johnson of New Mexico and James P. Gray of California. Also attached is a list of Libertarian electors from Ohio, per Ohio Revised Code 3505.10 and 3505.39. All are members in good standing of the Party.

Sincerely,

Kevin J. Knedler
Chair, Libertarian Party of Ohio Executive Committee


Bob Bridges
Vice-Chair, Libertarian Party of Ohio Executive Committee

www.lpo.org


2012 LP Ohio POTUS Electors Libertarian Party of Ohio		18 electors from Ohio LP		15-Jun-12	
Michael Johnston	1	5956 McJessy Drive	Westerville, OH	43081	
Steven Linnabary	2	2728 Christine Blvd	Columbus, OH	43231	
John Fockler	3	188 Stadium Drive Apt 6	Youngstown, OH	44512	
Jillian Mack	4	4310 Orchard Lane	Cincinnati, OH	45236	
Robert Ryan	5	9514 Conklin Avenue	Blue Ash, OH	45242	
Kevin Knedler	6	6248 Home Road	Delaware, OH	43015	
Bryant Callaghan	7	560 Cody Pass	Cincinnati, OH	45215	
Todd Grayson	8	939 Bexley Drive	Perrysburg, OH	43551	
Ted Lacksonen	9	11463 Colwill Road	Gambier, OH	43022	
Bob Coogan	10	5129 Aspenwood Drive	Liberty Township, OH	45011	
Bob Frey	11	7137 Silver Crest Drive	Cincinnati, OH	45236	
John Stewart	12	855 Bryn Mawr Drive	Columbus, OH	43230	
Remi Bannick	13	4310 Orchard Lane	Cincinnati, OH	45236	
Diana Knedler	14	6248 Home Road	Delaware, OH	43015	
George Zsidisin	15	119 Earl North Drive	Haskins, OH	43525	
Travis Irvine	16	729 College Avenue	Columbus, OH	43209	
Ann Leech	17	415 Pinebluff Drive	Loveland, OH	45140	
Ken Dejager	18	415 Pinebluff Drive	Loveland, OH	45140	


The 18 electors are attendees from the LP National LP Convention in Las Vegas
All are members of the Ohio affiliate of the Libertarian Party

Kevin J. Knedler
LPO State Executive Chair



Bob Bridges
LPO State Executive Vice-Chair





www.lpo.org

ORC # 3505.10 (B) (3) 3505.39

RECEIVED
 SECRETARY OF STATE
 ELECTIONS WALK-IN
 2012 JUN 29 PM 4:38



RECEIVED
SECRETARY OF STATE
ELECTIONS WALK-IN

Certificate of Nomination 2012 JUN 29 PM 4: 38

TO THE: Secretary of State or Board of Elections
OF THE: State of Ohio

We do hereby certify that at a National Convention of Delegates representing the Libertarian Party of the United States, duly held and convened in Las Vegas, Nevada on the 3rd through the 6th days of May, 2012, the following persons were placed in nomination for offices to be held at the ensuing general election, November 6, 2012, viz:

<i>Title of Office To be Filled</i>	<i>Name of Candidate</i>	<i>Name of Party</i>	<i>Place of Residence of Candidate</i>
President of the United States	Gary Johnson	Libertarian	El Prado, NM
Vice-President of the United States	James P. Gray	Libertarian	Newport Beach, CA

IN TESTIMONY WHEREOF, I have hereunto set my hand this 6 day of May, 2012.

17545 Chesbro Lake Dr, Morgan Hill, CA 95037

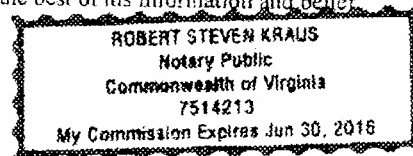
Permanent Address of Convention Chair

Mark W.A. Hinkle
Mark W.A. Hinkle, Chairman of the Libertarian Party

Mark W.A. Hinkle, being duly sworn that he was the presiding chair of the convention of delegates mentioned and described in the foregoing certificate and that the said Alicia G. Mattson was secretary of such convention, and that said certificate and statements therein contained are true to the best of his information and belief.

State of VA - City of Alexandria
Subscribed and sworn to before me
this 6 day of May, 2012

[Signature]
Notary Public



IN TESTIMONY WHEREOF, I have hereunto set my hand this 6 day of May, 2012.

11689 Arcadia Sunrise Dr, Henderson, NV 89052

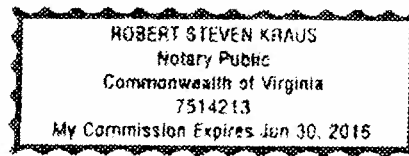
Permanent Address of Convention Secretary

Alicia G. Mattson
Alicia G. Mattson, Secretary of the Libertarian Party

Alicia G. Mattson, being duly sworn that she was the secretary of the convention of delegates mentioned and described in the foregoing certificate and that the said Mark W.A. Hinkle was the chairman of such convention, and that said certificate and statements therein are true to the best of her information and belief.

State of VA - City of Alexandria
Subscribed and sworn to before me
this 6 day of May, 2012

[Signature]
Notary Public





Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

July 12, 2012

Mark W.A. Hinkle
Chairman of the Libertarian Party
Libertarian National Committee, Inc.
2600 Virginia Ave., N.W., Suite 200
Washington, DC 20037

Re: Libertarian Party Achieving Ballot Access in Ohio

Dear Mr. Hinkle:

This letter serves as confirmation that Gary Johnson and James P. Gray have been certified to the 2012 General Election Ballot for the offices of president and vice-president.

You may contact Betsy Schuster, Chief Elections Counsel, at 614-466-2585, if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Jack L. Christopher".

Jack L. Christopher
General Counsel

cc: Kevin J. Knedler, Chair, Libertarian Party of Ohio Executive Committee
Bob Bridges, Vice-Chair, Libertarian Party of Ohio Executive Committee

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LIBERTARIAN PARTY OF OHIO, KEVIN :	Case No. 2:11-CV-722
KNEDLER, and MICHAEL JOHNSTON :	
Plaintiffs, :	
v. :	JUDGE ALGENON L. MARBLEY
JON HUSTED, :	
Defendant. :	MAGISTRATE JUDGE NORAH KING
:	
:	

NUNC PRO TUNC ORDER

This matter comes before the Court following a status conference held on October 17, 2011, during which Plaintiffs Libertarian Party of Ohio (“LPO”), Kevin Knedler, and Michael Johnston requested certain clarifications as to the affect of this Court’s September 7, 2011, Order (“the Order”) granting a Preliminary Injunction. (Dkt. 13.)

The import of the Order was to ensure that the LPO appears on the ballot for the November 2011 and November 2012 elections. Defendant Husted is hereby ordered, *nunc pro tunc*, to ensure that the LPO is placed on the November 2011 and November 2012 ballots. The LPO and its candidates must still satisfy all other applicable filing requirements as required by state law for political party and candidate eligibility, with the exception of those contained in O.R.C. § 3517.01(A)(1).

IT IS SO ORDERED.

s/Algenon L. Marbley
Algenon L. Marbley
United States District Judge

Dated: October 18, 2011